

3. No party in the above matter has provided any discovery responses in this case that have identified Mike Bandick in any respect.

4. While this defendant has no information on Mr. Bandick, presumably his testimony will be expert in nature. No party has identified Mr. Bandick as an expert witness or provided any information regarding his expected testimony as required by the Alabama Rules of Civil Procedure.

5. To the extent that Mr. Bandick is a fact witness, this defendant has no knowledge of his role in the underlying issues of this matter.

6. While this defendant does not seek an order that would preclude the deposition from going forward in the MDL cases, this defendant has not had an opportunity for adequate or meaningful preparation for the above-stated reasons.

7. Should Mr. Bandick's testimony be pertinent to the issues in this case, his deposition can be re-noticed at a time when the appropriate disclosures provided by the Rules of Civil Procedure and any future scheduling orders of this Court would allow.

8. The deposition of Mr. Bandick was cross-noticed in the blind without confirmation of availability of undersigned counsel. Notwithstanding the substantive objections outlined above, undersigned counsel is otherwise unavailable to attend at the date and time noticed.

9. Undersigned counsel has filed a Motion to Remand which is pending and due to be granted.

WHEREFORE, PREMISES CONSIDERED, this defendant respectfully moves this Court to quash the cross-notice of deposition of Mike Bandick and for entry of a protective order excluding his June 9, 2006 deposition from applicability to this case.

s/Michael K. Wright
Michael K. Wright (WRI005)
George E. Newton (NEW049)
Attorneys for Peter Lusche, M.D.

OF COUNSEL:
STARNES & ATCHISON LLP
Seventh Floor, 100 Brookwood Place
Post Office Box 598512
Birmingham, Alabama, 35259-8512
(205) 868-6000

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

David P. Matthews, Esq.
Abraham Watkins Nichols Sorrels
Matthews & Friend
800 Commerce Street
Houston, TX 77002

Joseph Luther Tucker, Esq.
Jackson & Tucker, PC
2229 First Avenue North
Birmingham, AL 35203-4203

Alan Daniel Mathis, Esq.
James C. Barton, Jr., Esq.
Johnston, Barton, Proctor & Powell
2900 AmSouth/Harbert Plaza
1901 Sixth Avenue North
Birmingham, AL 35203-2618

Respectfully submitted,

s/Michael K. Wright

Michael K. Wright

Attorney for Peter Lusche, M.D.

Bar No.: ASB-6338-G40M

Starnes & Atchison, LLP

P.O. Box 598512

Birmingham, AL 35259

Telephone: 205.868.6000

Facsimile: 205.868.6099

E-mail: MWright@starneslaw.com